

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OLIVIA SELTO, individually, as guardian
of minor child K.P. and as Personal
Representative of the Estate of KEVIN
PETERSON JR, deceased, TAMMI BELL,
individually and as Personal Representative
of the Estate, and KEVIN PETERSON SR,
individually,

Plaintiffs,

v.

COUNTY OF CLARK, a political
subdivision of the State of Washington;
SHERIFF CHUCK ATKINS; Sheriff's
Detective ROBERT ANDERSON; Sheriff's
Deputy JONATHAN FELLER; and JOHN
and JANE DOES 1-10, in their official and
personal capacities,

Defendants.

No. 3:22-cv-5384

DEFENDANTS' ANSWER TO
COMPLAINT AND AFFIRMATIVE
DEFENSES

JURY DEMAND

Defendants, COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE
STATE OF WASHINGTON; SHERIFF CHUCK ATKINS; SHERIFF'S DETECTIVE
ROBERT ANDERSON; and SHERIFF'S DEPUTY JONATHAN FELLER, in answer to
OLIVIA SELTO, individually, as guardian of minor child K.P. and as Personal
Representative of the Estate of KEVIN PETERSON JR, deceased, TAMMI BELL,
individually and as Personal Representative of the Estate, and KEVIN PETERSON SR,
individually's complaint, admits, denies and alleges as follows:

DEFENDANTS' ANSWER TO COMPLAINT AND
AFFIRMATIVE DEFENSES - 1
3:22-cv-5384

KEATING, BUCKLIN & McCORMACK, INC., P.S.

ATTORNEYS AT LAW
801 SECOND AVENUE, SUITE 1210
SEATTLE, WASHINGTON 98104
PHONE: (206) 623-8861
FAX: (206) 223-9423

I. INTRODUCTION

1. Defendants deny the allegations contained in paragraph 1 of Plaintiffs' Complaint.

2. Defendants deny the allegations contained in paragraph 2 of Plaintiffs' Complaint.

3. Defendants deny the allegations contained in paragraph 3 of Plaintiffs' Complaint.

4. Defendants deny the allegations contained in paragraph 4 of Plaintiffs' Complaint.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiffs' Complaint.

II. PARTIES

6. Defendants admit the allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit Sheriff Atkins was the elected Sheriff at the time of the incident. Defendants deny the remaining allegations contained in paragraph 7 of Plaintiffs' Complaint.

8. Defendants admit the allegations contained in paragraph 8 of Plaintiffs' Complaint.

9. Defendants admit the allegations contained in paragraph 9 of Plaintiffs' Complaint.

10. Defendants admit the allegations contained in paragraph 10 of Plaintiffs' Complaint.

11. Defendants deny for lack of knowledge the allegations contained in paragraph 11 of Plaintiffs' Complaint.

III. JURISDICTION AND VENUE

12. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 12 of Plaintiffs' Complaint.

13. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 13 of Plaintiffs' Complaint.

14. Defendants admit the allegations contained in paragraph 14 of Plaintiffs' Complaint.

IV. FACTS

A. Wrongful Death of Kevin Peterson Jr.

15. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 15 of Plaintiffs' Complaint.

16. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 16 of Plaintiffs' Complaint.

17. Defendants admit that Peterson was engaged in a felony at the time of his injury and death. Defendants deny the remaining allegations contained in paragraph 17 of Plaintiffs' Complaint.

18. Defendants deny the allegations contained in paragraph 18 of Plaintiffs' Complaint.

19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. Defendants admit Peterson realized he was going to be arrested for a serious felony and attempted to escape arrest. Defendants deny the remaining allegations contained in paragraph 20 of Plaintiffs' Complaint.

21. Defendants admit Peterson had a loaded and operating handgun. Defendants deny the remaining allegations contained in paragraph 21 of Plaintiffs' Complaint.

22. Defendants admit Peterson ran to various parts of the area. Defendants deny the remaining allegations contained in paragraph 22 of Plaintiffs' Complaint.

23. Defendants deny for lack of knowledge the allegations contained in paragraph 23 of Plaintiffs' Complaint.

1 24. Defendants admit that Peterson refused to obey deputies' commands.
2 Defendants deny the remaining allegations contained in paragraph 24 of Plaintiffs'
3 Complaint.

4 25. Defendants admit that any video speaks for itself. Defendants deny the
5 remaining allegations contained in paragraph 25 of Plaintiffs' Complaint.

6 26. Defendants admit that Deputy Anderson gave a statement which speaks for
7 itself. Defendants deny the remaining allegations contained in paragraph 26 of Plaintiffs'
8 Complaint.

9 27. Defendants admit that Deputy Feller was a fully commissioned and uniformed
10 law enforcement officer. Defendants deny the remaining allegations contained in paragraph
11 27 of Plaintiffs' Complaint.

12 28. Defendants admit that Deputy Feller gave a statement which speaks for itself.
13 Defendants deny the remaining allegations contained in paragraph 28 of Plaintiffs'
14 Complaint.

15 29. Defendants admit that Deputy Feller gave a statement which speaks for itself.
16 Defendants deny the remaining allegations contained in paragraph 29 of Plaintiffs'
17 Complaint.

18 30. Defendants deny the allegations contained in paragraph 30 of Plaintiffs'
19 Complaint.

20 31. Defendants deny the allegations contained in paragraph 31 of Plaintiffs'
21 Complaint.

22 32. Defendants deny the allegations contained in paragraph 32 of Plaintiffs'
23 Complaint.

24 33. Defendants deny the allegations contained in paragraph 33 of Plaintiffs'
25 Complaint.

26 34. Defendants deny the allegations contained in paragraph 34 of Plaintiffs'
27 Complaint.

1 35. Defendants admit deputies fired at Peterson as he pointed a handgun in their
2 direction. Defendants deny the remaining allegations contained in paragraph 35 of Plaintiffs'
3 Complaint.

4 36. Defendants deny the allegations contained in paragraph 36 of Plaintiffs'
5 Complaint.

6 37. Defendants deny the allegations contained in paragraph 37 of Plaintiffs'
7 Complaint.

8 38. Defendants admit a cell phone and gun were recovered next to Peterson.
9 Defendants deny the remaining allegations contained in paragraph 38 of Plaintiffs'
10 Complaint.

11 39. Defendants admit the allegations contained in paragraph 39 of Plaintiffs'
12 Complaint.

13 40. Defendants admit that Sheriff Atkins gave a statement which speaks for itself.
14 Defendants deny the remaining allegations contained in paragraph 40 of Plaintiffs'
15 Complaint.

16 41. Defendants admit that the gun was examined at the crime lab and the report
17 speaks for itself. Defendants deny the remaining allegations contained in paragraph 41 of
18 Plaintiffs' Complaint.

19 42. Defendants deny the allegations contained in paragraph 42 of Plaintiffs'
20 Complaint.

21 43. Defendants deny the allegations contained in paragraph 43 of Plaintiffs'
22 Complaint.

23 **B. Clark County Sheriff's Department Policies, Customs, and Established**
24 **Practices**

25 44. Defendants deny the allegations contained in paragraph 44 of Plaintiffs'
26 Complaint.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiffs' Complaint.

53. – 72. Defendants deny all claims and allegations in paragraphs 53 – 72, as denied or denied as legal conclusions.

73. Defendants admit the allegations contained in paragraph 73 of Plaintiffs' Complaint.

74. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 74 of Plaintiffs' Complaint.

1 75. This paragraph contains legal conclusions and therefore Defendants deny the
2 allegations contained in paragraph 75 of Plaintiffs' Complaint.

3 BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSE, Defendants
4 state and allege as follows:

5 1. **INTENTIONAL CONDUCT, INTOXICATION, COMPARATIVE**
6 **FAULT:** That the injuries and damages, if any, claimed by the Plaintiff were proximately
7 caused or contributed to by the fault of Plaintiff.

8 2. **DISCRETIONARY IMMUNITY:** That all actions of the Defendants herein
9 alleged as negligence, manifest a reasonable exercise of judgment and discretion by
10 authorized public officials made in the exercise of governmental authority entrusted to them
11 by law and are neither tortious nor actionable.

12 3. **ASSUMPTION OF RISK:** That the injuries and damages, if any, claimed
13 by the Plaintiff herein, arise out of a condition of which Plaintiff (decedent) had knowledge
14 and to which Plaintiff (decedent) voluntarily subjected himself.

15 4. **CAPACITY:** That the Plaintiff lacks capacity to sue either individually or in
16 a representative capacity.

17 5. **EXCUSE AND JUSTIFICATION:** That if the Plaintiff sustained any injury
18 or damage, the same was the result of reasonable conduct and required conduct of the
19 Defendants under the circumstances, and was excusable and justifiable in connection with
20 the arrest and in connection with Plaintiff's obstruction of the officer and efforts to resist
21 arrest.

22 6. **PROVOCATION:** That if the Plaintiff sustained any injury or damage, the
23 same was provoked by the conduct of the Plaintiff.

24 7. **REASONABLE AND LAWFUL FORCE:** That any force utilized by the
25 Defendants was reasonable, necessary and lawful under the circumstances.

26 8. **LAWFUL ARREST:** That the arrest of the Plaintiff was lawful.
27

12. **COMMISSION OF FELONY:** Peterson was in commission of a felony at the time of his injury and death, and this constitutes a complete defense to claims under State law.

WHEREFORE, Defendants, COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON; SHERIFF CHUCK ATKINS; SHERIFF'S DETECTIVE ROBERT ANDERSON; and SHERIFF'S DEPUTY JONATHAN FELLER, pray for the following relief:

1. That Plaintiffs' complaint be dismissed with prejudice, and that Plaintiffs take nothing by their complaint;
2. That Defendants be allowed their statutory costs and reasonable attorney fees incurred herein; and
3. For such additional relief the Court may deem just and equitable.

The Defendants respectfully demand their right to a trial by jury in this matter.

DATED this 10th day of August, 2022.

1
2 KEATING, BUCKLIN & McCORMACK, INC., P.S.

3
4 By: /s/ Andrew Cooley

5 Andrew Cooley, WSBA #15189

6 Paul J. Triesch, WSBA #17445

7 Attorneys for Defendants, County of Clark, Sheriff

8 Chuck Atkins, Sheriff's Detective Robert Anderson

9 and Sheriff's Deputy Jonathan Feller

10 801 Second Avenue, Suite 1210

11 Seattle, WA 98104

12 Phone: (206) 623-8861

13 Fax: (206) 223-9423

14 Email: acooley@kbmlawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiffs

Mark Lindquist, WSBA #25076
Anthony Marsh, WSBA #45194
HERRMANN LAW GROUP
505 5th Ave. S., Ste. 330
Seattle, WA 98104
Telephone: 206.625.9104
Email: mark@hlg.lawyer
anthony@hlg.lawyer
john@hlg.lawyer

DATED: August 10, 2022

/s/ Andrew Cooley

Andrew Cooley, WSBA #15189
Attorneys for Defendants, County of Clark,
Sheriff Chuck Atkins, Sheriff's Detective
Robert Anderson and Sheriff's Deputy
Jonathan Feller

801 Second Avenue, Suite 1210
Seattle, WA 98104
Phone: (206) 623-8861
Fax: (206) 223-9423
Email: acooley@kbmlawyers.com